IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 865 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SAURABHBHAI KANTILAL RAVAL - Applicant(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

PARTY-IN-PERSONfor Petitioner No(s).: 1.

PUBLIC PROSECUTOR for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE JAYANT PATEL

Date : 04/07/2005

ORAL JUDGMENT

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1..Rule. Mr.Kogje, Ld.APP waives service of rule. With the consent of parties, matter is taken for final hearing.

2.The only question which arises for consideration is:
"***Whether the party to the proceedings can conduct the matter of his own without engaging advocate or not?"***
In normal circumstances, the answer would be "yes", and the same, for the reasons recorded hereinafter, may be the conclusion in the present case.

3.There is no grievance raised by the petitioner regarding the pendency of proceedings before the Ld.Magistrate. However, it appears that on 28.3.05 the petitioner—Saurabhbhai Rawal moved an application before the Ld.Metropolitan Magistrate for permitting him to appear as party in person for defending the case. The application was considered by the Ld.Magistrate and it appears that the Ld.Magistrate dismissed the application on the ground that the advocate Shri D.B.Ganguly was engaged and he has not retired. It has been further observed by the Ld.Magistrate that because Saurabbhai is not having proper knowledge of law, in the interest of justice, such permission can not be granted as it is also the duty of the court to see that interest of the accused is protected. It has also been observed that as per the complaint, it is not a case where due to financial incapacity the person is not in a position to engage a lawyer . Therefore, the Ld.Magistrate has dismissed the application.

4.Heard Mr.Saurab Raval, who has appeared as party in person and Mr.Kogje, Ld. APP for the State.

5.As such, any party to the proceedings can defend or pursue the proceedings without engaging lawyer. However, lawyer can be engaged by such person for prosecuting or defending his case. In a given case, if the court finds that the accused is not properly represented or has no capacity to represent or due to valid reasons is not in a position to represent the case, the Court may direct the State to appoint the lawyer for defending the case on behalf of the accused. Upon inquiry, it has been submitted by the petitioner party in person that he is holding the qualification B.E(Civil) and he is not such an illiterate person. Further, it was specifically put to the petitioner that in the event the decision is against him, at the trial, he will not be in a position to raise the contention that he is not aware about the law or that he was not aware about the procedural aspects and and therefore such decision should be set aside on that ground. The party in person has admitted the said position and has declared before the court that he will not raise such contention in the event the decision of the court is against him at the conclusion of the trial. He has also declared before this court that it was put by the Ld.Magistrate to him that in case he is not in position to engage the lawyer, the State may

make arrangement for engaging a lawyer for defending the case, but he had declared before the Ld.Magistrate that he does not want to engage lawyer at the expenses of the State. Therefore, that question does not arise.

6. It also appears that Shri D.B.Ganguly who was engaged as lawyer has not objected for defending the case by the accused who is petitioner herein. Under these circumstances no serious aspect is brought to the notice of the court by the State which may disentitle the accused/party in person to defend his case independently. The party in person who is original accused is not a person who can be said as a person who is not in a sound state of mind and from the averments made in the petition it appears that he is a qualified person doing business on his own and he is supposed to know the pros and cons of defending the case through lawyer or independently. Therefore, I find that normally the principles of allowing the party to represent his own case by himself should operate and there is no valid justification in rejecting the prayer of the petitioner to defend his case without engaging lawyer or by himself.

7. In view of the above, the order passed by the Ld.Magistrate, dated 18.6.05 is quashed and set aside and the petitioner is permitted to defend his case being Criminal Case No.3796/96 pending in the court of Metropolitan Magistrate, Court No.9, Ahmedabad.

8. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

(JAYANT PATEL,J)